

BEFORE THE
POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

IN THE MATTER OF)
WILLIAM NYSTROM and)
NORTHWESTERN ROOFING, INC.,)
d.b.a. Peterman Roofing,)
Appellants,)
v.)
PUGET SOUND AIR POLLUTION)
CONTROL AGENCY,)
Respondent.)

PCHB No. 78-5

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This matter, the appeal of a \$250 civil penalty for emissions from a roofing tanker allegedly in violation of respondent's Section 9.03(b) of Regulation I came on for hearing before the Pollution Control Hearings Board, Dave J. Mooney, Chairman, and Chris Smith, Member, convened at Seattle, Washington on March 27, 1978. Hearing examiner William A. Harrison presided. Respondent elected a formal hearing pursuant to RCW 43.21B.230.

Appellants appeared by and through their attorney, Grant S. Meiner.

Respondent appeared by and through its attorney, Keith D. McGoffin.

Olympia court reporter Christina M. Check recorded the proceedings.

Witnesses were sworn and testified. Exhibits were examined. From testimony heard and exhibits examined, the Pollution Control Hearings Board makes these

FINDINGS OF FACT

I

Respondent, pursuant to PCW 43.21B.260, has filed with this Hearings Board a certified copy of its Regulation I containing respondent's regulations and amendments thereto, of which official notice is taken.

II

On November 30, 1977, appellants' employees brought a roofing tanker, containing molten asphalt, from a job site to the appellants' storage yard on NW 40th Street in Seattle, Washington. Respondent, Puget Sound Air Pollution Control Agency (PSAPCA), received a telephone complaint about smoke and odor emanating from the appellants' yard. At approximately 4.00 p.m. on that same day, respondent's inspector went to the scene and observed that appellants' tanker was standing with the hatch ajar and that white smoke was arising from it. The inspector verified that the tanker contained an undetermined amount of molten asphalt and estimated the temperature inside the tanker to be around 475°F. At this temperature the plume which rose from the tanker was smoke (condensed hydrocarbons), and not water vapor.

Appellants caused emissions aggregating at least six consecutive minutes and of an opacity ranging from 50 to 60 percent.

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

1 III

2 Appellant received Notice and Order of Civil Penalty No. 3611 citing
3 Section 9.03(b) of respondent's Regulation I and assessing a civil penalty
4 of \$250. From this penalty, appellants appeal. Section 9.03(b) of
5 respondent's Regulation I states:

6 After July 1, 1975, it shall be unlawful for any person to
7 cause or allow the emission of any air contaminant for a period
8 or periods aggregating more than three (3) minutes in any one
9 hour, which is:

10 (1) Darker in shade than that designated as No. 1 (20%
11 density) on the Ringelmann Chart, as published by the United
12 States Bureau of Mines; or

13 (2) Of such opacity as to obscure an observer's view to a
14 degree equal to or greater than does smoke described in Sub-
15 section 9.03(b)(1); provided that, 9.03(b)(2) shall not apply
16 to fuel burning equipment utilizing wood residue when the
17 particulate emission from such equipment is not greater than
18 0.05 grain per standard cubic foot.

19 IV

20 Emissions such as these might be avoided by lowering the temperature
21 within the tanker and, if then safe to do so, closing the hatch.

22 V

23 Any Conclusion of Law which should be deemed a Finding of Fact is
24 hereby adopted as such.

25 From these Findings, the Pollution Control Hearings Board comes
26 to these

27 CONCLUSIONS OF LAW

I

28 In emitting an air contaminant, smoke, for more than three minutes
29 in any one hour, which contaminant is of an opacity obscuring an
30 observer's view to a degree equal to or greater than the smoke designated
31 as No. 1 on the Ringelmann Chart, appellants violated Section 9.03(b) of

32 FINAL FINDINGS OF FACT,
33 CONCLUSIONS OF LAW AND ORDER

1 respondent's Regulation I.

2 We draw the conclusion that smoke, such as appellants emitted, is
3 an air contaminant by reference to respondent's Section 1.07(b) which
4 defines air contaminant as "smoke" or "other particulate matter."
5 "Particulate matter" is defined as "any material, except water in an
6 uncombined form, that is or has been airborne and exists as a liquid or
7 solid at standard conditions." Section 1.07(v).

8 II

9 Any Finding of Fact which should be deemed a Conclusion of Law is
10 hereby adopted as such.

11 From these Conclusions, the Board enters this

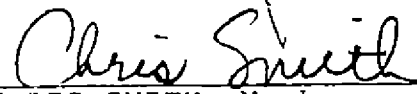
12 ORDER

13 The \$250 civil penalty assessed by Notice and Order of Civil Penal+
14 No. 3611 is hereby affirmed.

15 DATED this 10th day of April, 1978.

16 POLLUTION CONTROL HEARINGS BOARD

17
18 
19 DAVE J. MOONEY, Chairman

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21 CHRIS SMITH, Member

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26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW
AND ORDER